

REDACTED VERSION*

Matter of: DNL Properties, Inc.; Crawford/Edgewood Managers, Inc.; Pearl Properties

File: B-253614.2; B-253614.3; B-253614.5; B-253734

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Melton Harrell for Intown Properties, Inc., an interested party.

Sharon Swain, Esq., Department of Housing and Urban Development, for the agency.

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DIGEST

1. Protests alleging improper technical evaluation and award decision are sustained where the evaluation documents include only point scores representing consensus of entire evaluation board but do not include contemporaneous narrative explanations showing the strengths, weaknesses, and risks associated with each proposal.
2. Protest that agency official improperly influenced evaluation of proposals and award decision to prevent the protester from receiving contract is denied where there is no evidence in the record to support the allegation, named agency official was not a member of the evaluation board or an adviser to the board, and agency issued solicitation amendment specifically removing the named individual from his position as government technical representative for the procurement before receiving initial proposals in response to protester's earlier complaint.

*The decision issued October 12, 1993, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

DECISION

DNL Properties, Inc. (DNL); Crawford/Edgewood Managers, Inc. (Crawford); and Pearl Properties (Pearl) protest the Department of Housing and Urban Development's (HUD) award of a contract to Intown Properties, Inc. (Intown) for management and related services pertaining to single family properties pursuant to request for proposals (RFP) No. DU203-92-R-0137. We sustain Pearl's and Crawford's protests on the ground that HUD has not adequately supported the technical evaluation and award decision. We dismiss DNL's protest.

Issued on November 12, 1992, the RFP solicited offers to provide real estate asset manager services for HUD's Washington, D.C. field office. The RFP divided the Washington, D.C. geographic area into three smaller areas: area 1--Washington, D.C.; area 2--Maryland (Montgomery and Prince Georges counties); and area 3--Virginia (the cities of Alexandria, Arlington, Falls Church, and Manassas; Loudoun, Fairfax and Prince William counties). The contractor will be required to perform a multitude of services, including: inspecting newly listed properties, removing and disposing of trash, securing property against unauthorized entry, maintaining landscaping, contracting for and inspecting repairs, determining the amount of and collecting rent, investigating and recommending resolution of tenant complaints, and initiating evictions.

The RFP permitted offers based on one or more geographic areas and contemplated award of a firm, fixed-price, indefinite quantity contract for a basic period of 1 year with options for 2 additional years. The RFP stated that award would be made to the offeror(s) representing the best value to government, cost or price and other factors considered, and that technical merit would be considered more significant than cost or price. The RFP listed the following seven technical and management factors and associated point values:

- (1) Experience in the management of single family properties similar to and in the general area covered by this solicitation (25 points);
- (2) Experience in documenting findings of property inspection and developing listings of needed repairs, and estimating the cost of such repairs (15 points);

(3) Experience in soliciting repair bids, coordinating and overseeing repair work and inspecting for satisfactory completion (10 points);

(4) Experience in managing a rental program, including establishing and collecting rent for single family properties (10 points);

(5) Evidence of adequately staffed, trained, and equipped office (or the ability to establish such) reasonably located to provide convenient service to HUD and its clients in the area to be served, and to carry out all duties specified (15 points);

(6) Experience in complying with a system of financial reporting and accountability (10 points);

(7) Ability to manage employees and subcontractors on past or current projects (10 points).

[Deleted] offers were received by the January 20, 1993, due date for receipt of initial proposals. The source evaluation board determined that [deleted] offers were technically acceptable or were capable of being made acceptable, and the contracting officer included [deleted] of those in the competitive range. Of the [deleted] proposals not included in the competitive range, [deleted] were evaluated as capable of being made technically acceptable but were excluded from the competitive range on the basis of their extremely high proposed prices. The other [deleted] proposals were evaluated as technically unacceptable, and the contracting officer eliminated them from the competitive range because each was "so deficient that an entirely new proposal would be required to achieve an acceptable rating."

Discussions were held and best and final offers (BAFO) received from [deleted] competitive range offerors by the April 9 due date. Upon evaluation of BAFOs, the final technical rankings and corresponding prices (for all three areas unless otherwise noted) were:

<u>Offeror</u>	<u>Technical Score</u>	<u>Total Price</u>
[deleted]	[deleted]	[deleted]

The contracting officer determined that the proposals [deleted]. The contracting officer calculated that [deleted] would cost the government [deleted]. Therefore,

¹One offer was withdrawn before the closing date.

based upon [deleted], the contracting officer awarded a contract [deleted] to Intown on May 26, 1993. The protests were filed shortly thereafter.

EVALUATION AND AWARD DECISION ISSUES

Crawford and Pearl allege that HUD favored Intown both in the evaluation process and award decision. Pearl argues that Intown's technical evaluation "could not have overcome the cost evaluation under which Intown Properties' prices are [deleted] higher than the prices offered by Pearl Properties." Crawford contends that HUD did not evaluate proposals in accord with the RFP's evaluation factors which stressed experience performing similar work in the local geographic area.

In reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation criteria. Apt. Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. In order for us to review an agency's selection determination, an agency must have adequate documentation to support its selection decision. Arco Mgmt. of Wash., D.C., Inc., B-248653, Sept. 11, 1992, 92-2 CPD ¶ 173. The Federal Acquisition Regulation (FAR) requires agencies to document their evaluation of proposals and their selection decisions so as to show the relative differences between proposals, their weaknesses and risks, and the basis and reasons for the selection decision, FAR §§ 15.608 and 15.612(d)(2); see also S&M Prop. Mgmt., B-243051, June 28, 1991, 91-1 CPD ¶ 615.

After reviewing all of the supporting documentation submitted by HUD,² we conclude that the technical evaluation is not adequately supported. We also conclude that without adequate support for the technical evaluation, a proper award determination could not be made. See Arco Mgmt. of Wash., D.C., Inc., supra. Additionally, as discussed below, the record suggests that the award decision may have been arbitrary. See S&M Prop. Mgmt., supra.

²HUD did not submit all of the evaluation documents with its initial protest report. We contacted HUD on several occasions and requested the agency to submit unredacted copies of all evaluation documents including, but not limited to, individual evaluators' scoresheets, narratives, notes, memorandums, and consensus reports supporting evaluation of both initial proposals and BAFOs. HUD complied and assured our Office that no other evaluation documents exist.

The only documents supporting the technical evaluations are what appear to be consensus reports stating only the evaluation board's overall adjectival rating and a total point score for each proposal for each of the technical evaluation factors. In rare instances, there are very brief notations on the original evaluation documents showing that a particular proposal's initial score was adjusted upon evaluation of BAFOs. However, there are no scoresheets, narratives, notes or any other documents showing what the individual evaluators thought of each proposal. Furthermore, there are no descriptions stating why any proposal received a particular rating for a particular evaluation factor, no statements detailing the various strengths and weaknesses of any proposal, and no assessments of risk inherent in any proposal.

The typewritten evaluation documents purport to contain narratives describing the strengths and weaknesses of proposals and rating the proposals on technical merit (i.e., poor, good, or excellent). However, examination of all of the technical evaluation documents reveals that: (1) the purported narratives are generic in nature and were prepared prior to evaluating the proposals; (2) the evaluation document for every proposal contains the exact same, preprinted, generic narratives; (3) each generic narrative represented a range of point scores (for example, the narrative labeled "excellent" might represent a range of 11 to 15 technical evaluation points) and that the source evaluation board merely wrote in a consensus point total above the preprinted narrative that matched the consensus point total; and (4) there are no descriptions or narrative discussions prepared after evaluation of any of the proposals.

The following examples illustrate why the lack of narratives describing the technical merits and deficiencies of individual proposals is critical.

In the most important evaluation factor--demonstrated experience in management of single family properties similar to and in the area covered by the RFP--Intown, DNL, and Pearl all received [deleted], respectively, out of a possible 25 points. However, there is no explanation of why DNL received [deleted] or why Pearl was [deleted] and Intown [deleted] for this factor. Without any explanation of the ratings, we cannot discern why Intown's [deleted] proposal was worth [deleted] or whether this [deleted] signified any material difference between these offers. There is no explanation for the points given each firm under each of the other evaluation factors. The cumulative effect of the unexplained ratings differences for the seven evaluation factors was that Intown's BAFO was rated [deleted]. On this record, we have no basis to determine the reasonableness of HUD's overall technical evaluation ratings.

A second example concerns HUD's determination that the proposals of [deleted], respectively. The source selection official selected Intown's proposal for award because its proposed price was [deleted]. There is nothing in the source selection decision document explaining why [deleted] was not worth [deleted]. As there are no narratives from the evaluators explaining why each proposal was given a particular score for each factor, the record is totally lacking support for HUD's selection of Intown. Thus, there is no explanation why, [deleted], HUD would choose the [deleted] proposal in order to save [deleted] on a contract totaling [deleted] where the RFP stated that technical merit would be considered more significant than cost or price.

The next example originated with Crawford's argument that, since Intown was not initially licensed to do business in the Washington, D.C. area, Intown should not have received [deleted] for factor No. 1 which required experience in "management of single family properties similar to and in the general area as those covered by this solicitation." Crawford also argued that Intown's lack of experience/licenses should have resulted in significant reductions in the technical scores it received in the six evaluation factors requiring some kind of experience or ability. We note that Intown received [deleted] on all six factors requiring experience/ability. For example, Intown's proposal was rated [deleted] points on factor No. 1. Other than the points scores set forth in the evaluation documents, there is nothing showing why Intown received [deleted] on these factors. In fact, we do not know whether Intown's scores reflected Intown's lack of experience in the local market or whether other locally-licensed offerors received additional points because of their experience in the local area.

The last example suggests that the award decision may have been arbitrary. Pearl's BAFO received a technical rating [deleted], while Intown's BAFO received a technical rating [deleted]. Thus, [deleted] represented by Pearl's proposal on this fixed-price contract would be about [deleted]. Nonetheless, the source selection official determined that Intown was in line for award but Pearl was not to be considered further because [deleted] Pearl did not have a clear understanding of the scope of the work required. However, the evaluation documents contradict the source selection official's conclusion that Pearl did not understand the statement of work.

The record shows that Pearl's proposal received [deleted] on six evaluation factors and [deleted] on a factor (ability to manage employees and subcontractors) among the least important--worth 10 points. Intown's proposal [deleted] in six evaluation factors and [deleted] in the second most

important factor (adequate staff, training, and office) which was worth 15 points. We think it is significant that Intown's [deleted] rating was for the second most important evaluation factor while Pearl's [deleted] rating was for one of the least important evaluation factors. There is no explanation in the evaluation documents of how HUD could give Pearl's proposal [deleted] in six of seven evaluation factors, [deleted] and yet reasonably conclude that Pearl did not understand what work would be required simply because the firm offered [deleted] for the fixed-price contract. In our opinion, the fact that Pearl's proposal was rated [deleted] for six factors, five of which relate to experience and the sixth of which relates to staffing (including proper training), is in direct conflict with the source selection official's conclusion that Pearl does not understand the scope of the work.

In sum, we conclude that HUD's evaluation of technical proposals is not adequately supported by the record and, therefore, believe the evaluation was not reasonable. See Arco Mgmt. of Wash., D.C., Inc., supra. Furthermore, without adequate support for the technical evaluation, we conclude that the award determination also was not adequately supported and could not have been made properly. Id. Accordingly, we sustain Crawford's and Pearl's protests on this ground.

BIASED HUD OFFICIAL ISSUE

Pearl argues that the procurement was biased against it due to improper influence exerted by a particular HUD official who improperly exerted his influence over the evaluators, the evaluation and the selection process to prevent Pearl from receiving the award. There is no evidence in the record supporting the allegation. Although the allegedly biased employee was initially named in the RFP as the government's technical representative, HUD reported that in response to complaints made by Pearl, the individual was removed as government technical representative before initial proposals were received and he did not participate in either the technical evaluation or award decision. To support its statement, HUD provided documentation showing that the named individual was not a member of the evaluation board nor was he an adviser to the board. In addition, RFP amendment No. 003, issued December 30, 1992, specifically deleted the named official as technical representative.

In the absence of any evidence showing that the named HUD official actually influenced the evaluation/selection process to prevent Pearl from being awarded the contract, Pearl's bare allegation is insufficient to sustain its protest. See ASI Universal Corp., Inc.--Recon., B-239680.2, Nov. 13, 1990, 90-2 CPD ¶ 389. Any contention that the

government acted in bad faith or with bias towards an offeror in a procurement must be supported with convincing evidence that agency officials had a specific, malicious intent to harm the protester. Id. Pearl has proffered no such evidence, and, therefore, Pearl's protest is denied on this point.

REAL ESTATE LICENSE ISSUE

DNL and Crawford both contend that award to Intown was improper because Intown did not possess real estate licenses in any of the three jurisdictions at the time it submitted its initial proposal. DNL also argues that HUD improperly favored Intown by postponing award until May 26, at which time Intown had obtained local licenses.

Where an RFP requires the contractor to obtain a specific license, but does not state that the license must be obtained prior to award, the contractor may even obtain the license after contract award. See Al Johnson Reforestry, B-227545, Oct. 9, 1987, 87-2 CPD ¶ 348. An agency may properly delay making award for a reasonable period of time to allow an offeror to obtain a license. See CompuChem Laboratories, Inc., B-242889, June 17, 1991, 91-1 CPD ¶ 572 at 5. The current RFP did not require offerors to provide evidence of licenses with their offers or even before award and, therefore, imposed only a general requirement that the contractor have all necessary licenses and permits to perform the work. See Int'l Serv. Assocs., Inc., B-253050, Aug. 4, 1993, 93-2 CPD ¶ _____. In such cases, the alleged lack of a state real estate license is not a bar to contract award. The Parks Co., B-249473, Nov. 17, 1992, 92-2 CPD ¶ 354. We dismiss the protests on this ground.

SOLICITATION IMPROPRIETIES ISSUES

In its initial protest letter (June 4, 1993), DNL alleged that there were several improprieties in the RFP itself, including: (1) a statement that habitability studies would be required in "rare" instances when in fact DNL's experience as incumbent was that such studies were commonplace; (2) an unclear provision regarding whether the cost of providing a work order log compatible with HUD's single family accounting system should be included in proposed prices; (3) no requirement that the contractor have access to a multiple listing service; and (4) amendment No. 004, issued on March 31, simultaneously changed some work requirements and requested BAFOs.

Under our Bid Protest Regulations, protests alleging improprieties in a solicitation must be filed before the time set for receipt of initial proposals; where alleged improprieties are incorporated into an RFP by amendment, protests

must be filed no later than the next closing date for receipt of proposals following incorporation. 4 C.F.R. § 21.2(a)(1) (1993). Since each of these alleged improprieties should have been apparent to DNL from reading the RFP, or at the latest, from review of the RFP amendments, but DNL did not file its protest until well after the April 9, 1993, closing date for receipt of BAFOs, these grounds of protest are untimely and will not be considered.

On June 11, DNL asserted that HUD will not require Intown to change locks on HUD properties as required by the RFP. HUD reported to our Office that it intends to enforce the contract provisions regarding lock changes. HUD pointed out that RFP amendment No. 003, issued December 30, 1992, notified offerors that HUD would attempt to get all mortgagees to change their locks to accept the HUD master key, thereby eliminating the necessity for one lock change.

To the extent that DNL is protesting that the RFP lock change provisions were unclear, the protest is untimely because it was filed after the April 9 closing date for receipt of BAFOs. 4 C.F.R. § 21.2(a)(1). Given that amendment No. 003 put all offerors on notice that one lock change might be eliminated if HUD was successful in getting mortgagees to change the locks to accept HUD's master key, it is clear that HUD did not solicit offers based on a firm RFP requirement that HUD had no intention of enforcing after award. As HUD intends to enforce this contract provision according to circumstances arising after contract award, the protest is denied on this point. See Color Dynamics, Inc., B-250398, Jan. 22, 1993, 93-1 CPD ¶ 56.

RECOMMENDATION

By letter of today to the Secretary of HUD, we are recommending that the agency reevaluate the BAFOs in accord with the RFP's evaluation criteria and properly document the evaluation with contemporaneous narrative explanations from each evaluator describing the strengths, weaknesses, and risks associated with each BAFO. After doing so, if Intown's proposal is no longer considered to represent the best value to the government, the agency should terminate Intown's contract for the convenience of the government and award the contract to the offeror whose proposal does represent the best value.

Crawford and Pearl are entitled to recover the costs of filing and pursuing their protests, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1). In accordance with 4 C.F.R. § 21.6(f)(1), a certified claim for such costs, detailing the time expended and costs incurred, should be submitted directly to the contracting agency within 60 days after receipt of this decision.

The protests of Crawford and Pearl are sustained; DNL's protest is dismissed.

Comptroller General
of the United States